IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 5TH JANUARY 2007 / 5TH POUSHA, 1928

Crl.MC.No. 37 of 2007()

---

AGAINST THE ORDER DATED 01/12/2006 IN CMP.4869/06 IN CC.94/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM

.....

PETITIONER/ACCUSED

---

MOHAMOOD HAMEED, S/O.M.V. HAMEED
ZAKEENA MANZIL, CHALA EAST, KANNUR-670621
(MOHAMOOD HAMEED,P.O.BOX N0.117
LIVA POSTAL CODE 325, SULTANATE OF OMAN)

BY ADV. SRI.C.C.THOMAS

RESPONDENTS/COMPLAINANT & STATE:

---

1.P.K.MOHANAN, S/O. KRISHNAN
PALLIKKARA HOUSE, P.O. KATTAKAMPAL
REP. BY HIS POWER OF ATTORNEY HOLDER
P.R. RAMESH, S/O. RAGHAVAN,
PARAYAMVALAPPIL HOUSE, KATTAKAMPAL P.O.
THRISSUR DIST.

2. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

- - - - - - - - - - - - - - - - - - - - - -

Crl.M.C.No. 37 of 2007

- - - - - - - - - - - - - - - - - - - - - -

Dated this the 5th day of January, 2007

**O R D E R**

The petitioner is the accused in a prosecution under Section 138 of the N.I. Act. He is aggrieved by the rejection of his petition under Section 311 Cr.P.C. The complainant had produced a document. According to the petitioner, that document is vitally relevant to establish his case that no proper notice was sent. The complainant did not mark that document. In the course of cross examination the petitioner's counsel also omitted to make use of that document and cross examine the petitioner. The petitioner and his counsel have now realised the omission/inadequacy. It was hence that the petition under Section 311 Cr.P.C. was filed to recall the complainant so that he can be confronted with the fact - of the notice having been sent in an incorrect address.

2. The learned Magistrate, by the impugned order, rejected the petition. The petitioner claims to be aggrieved by the impugned order. The prosecution was initiated as early as in 2004. Admittedly it had reached the fag end. I am satisfied that this petition can be

allowed and appropriate directions issued without waiting for issue and return of notice to the respondent/complainant.

3. This Crl.M.C. is allowed subject to conditions. If the petitioner deposits/pays to the complainant cost of Rs.500/- on the next date of posting, the learned Magistrate shall permit the petitioner to recall the complainant and cross examine him.

4. Issue copy of the order to the learned counsel for the petitioner, who shall produce the order before the learned Magistrate on the next date of posting.

**(R. BASANT)**
Judge

tm